

Memorandum of Decision: 04-20181393R
Gross Retail Tax
For the Year 2016

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Individual was not subject to Indiana sales tax on the purchase of a vehicle as Individual's home state exempts such purchases from sales tax.

ISSUE

I. Gross Retail Tax - Indiana Vehicle Sales.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-2-3; D.C. Code § 47-2002(a) (2016); D.C. Code § 47-2005(13) (2016); D.C. Code § 50-2201.03(j)(1) (2016); [45 IAC 2.2-3-5](#); Sales Tax Information Bulletin 28S (April 2012); Sales Tax Information Bulletin 84 (August 2014).

Taxpayer protests the denial of refund of gross retail tax.

STATEMENT OF FACTS

Taxpayer is a resident of Washington, D.C. In August of 2016, Taxpayer purchased a vehicle from an Indiana dealership ("Dealership"). The purchase itself was coordinated via email, fax and text and Taxpayer signed the purchase agreement on August 10, 2016. At the time of purchase, Dealership collected sales tax from Taxpayer in the amount of approximately \$2,500 or six percent of the purchase price of the vehicle. Taxpayer signed an Indiana form ST-108NR certifying that this sales tax was collected.

On August 13, 2016, Taxpayer flew to Indiana with the intention of picking up the vehicle and driving it back to Washington, D.C. Upon arrival at the Dealership, Taxpayer discovered that the vehicle had had mechanical issues but Dealership believed they had resolved the problem. After a test drive, the parties agreed that the vehicle appeared to be working and Taxpayer began his drive home. After driving a few blocks, the vehicle broke down and had to be returned to Dealership. Dealership provided Taxpayer with a loaner vehicle to drive back to Washington, D.C. while Dealership addressed the issues with Taxpayer's vehicle. Once Taxpayer's vehicle was fixed, Dealership arranged for a third party to drive it to Taxpayer. Taxpayer received the vehicle on August 18, 2016, in Maryland.

According to Taxpayer, the parties agreed that Dealership would register the vehicle in Washington, D.C. on Taxpayer's behalf. Dealership was unable to do so and sent Taxpayer the documents necessary to register the vehicle, which Taxpayer did on September 23, 2016.

Upon registering the vehicle, Taxpayer discovered that vehicles are exempt from sales tax in Washington D.C. Therefore, Taxpayer requested that Dealership refund the sales tax it collected at the time of purchase. Dealership refused. On January 16, 2018, Taxpayer filed a Claim for Refund with the Indiana Department of Revenue ("Department") for the amount of the sales tax withheld. In a letter dated March 13, 2018, the Department denied Taxpayer's claim stating that "dealers must collect the applicable tax rate on all sales of the buyer's home state. The dealership collected the sales tax rate for DC."

Taxpayer filed a timely protest of the refund denial and an administrative hearing was held. This Memorandum of Decision results. Additional facts will be provided as necessary.

I. Gross Retail Tax - Indiana Vehicle Sales.

DISCUSSION

Taxpayer makes three arguments in support of his claim for refund. First, Taxpayer argues that because Washington, D.C. exempts vehicles from sales tax, Dealership should not have collected sales tax at the time of purchase, thus the sales tax collected should be refunded. Alternatively, Taxpayer argues that the sale of the vehicle was not completed in Indiana and was therefore exempt from Indiana sales tax. Finally, Taxpayer argues that the collection of tax was inequitable and a violation of the Dormant Commerce Clause.

Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1 *et seq.* The person who acquires tangible personal property in a retail transaction is liable for the tax on the transaction. IC § 6-2.5-2-1(b). For transactions involving the sale of an automobile, [45 IAC 2.2-3-5\(c\)](#) states that "[i]f the vehicle is purchased from a registered Indiana motor vehicle dealer, the dealer must collect the tax and provide the purchaser a completed form ST-108 showing that the tax has been paid to [the dealer]." If the purchaser intends to transport the vehicle outside of Indiana within thirty days after delivery and will title or register that vehicle in another state or country, the tax collected should be calculated using the rate of that state. IC § 6-2.5-2-3(b).

Taxpayer argues that though he purchased the vehicle in Indiana, he intended to, and in fact, did, transport the vehicle outside of Indiana within thirty days after taking possession of the vehicle. After failed attempts by Dealership, Taxpayer finally titled and registered the vehicle outside of Indiana as well. Therefore, under IC § 6-2.5-2-3(b), Dealership was obligated to collect sales tax from Taxpayer at the rate of his "state," the District of Columbia. Washington, D.C. has a general sales tax rate of 5.75%. (D.C. Code § 47-2002(a) (2016)). Sales of motor vehicles are exempt from this general sales tax. (D.C. Code § 47-2005(13) (2016)). However, sales of motor vehicles are subject to an excise tax of six percent. (D.C. Code § 50-2201.03(j)(1) (2016)). There is no credit against the excise tax for those Washington, D.C. residents who purchase a vehicle in another state and pay sales tax in that state. Therefore, Dealership should not have collected tax from Taxpayer at the time of purchase.

The taxability of this scenario is illustrated in Example Three in Sales Tax Information Bulletin 84:

Customer, who is a resident of the state of Georgia, comes to Indiana to buy a motor vehicle from a dealership in Indiana. Customer intends to title and register the vehicle for use in Georgia. In Georgia, the state's sales tax is not imposed on purchases of vehicles, but the state does impose an *ad valorem* tax on such purchases. Because an *ad valorem* tax is not a sales tax, the Indiana dealership would not be required to collect sales tax at the Georgia *ad valorem* tax rate. Furthermore, because Georgia's sales tax is not imposed on purchases of motor vehicles, the Indiana dealership would not collect sales tax at any rate (though Customer and the dealership would still have to fill out the ST-108NR).

20140827 Ind. Reg. 045140329NRA. (*Emphasis in original*).

Just as in the example, Washington, D.C. does not impose its general sales tax on the purchases of vehicles, but does impose a non-sales tax on such purchases. Just like the Indiana dealership in the example, Dealership should not have collected sales tax from Taxpayer. Further, Taxpayer cannot use the tax collected by Dealership as a credit against the excise tax, thus Taxpayer is entitled to a full refund of the tax.

Taxpayer made an alternative argument that the sale of the vehicle was not completed in Indiana and was therefore exempt from Indiana sales tax. A non-resident purchaser may be exempt from Indiana sales tax if the sale is sourced outside of Indiana. This is commonly referred to as the interstate commerce exemption. Sales Tax Information Bulletin 28S, 20120530 Ind. Reg. 045120259NRA. "To qualify as being 'sold in interstate commerce,' the vehicle . . . **must be physically delivered, by the selling dealer to a delivery point outside Indiana.**" *Id.* (**Emphasis in original**). "The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle . . . in Indiana. . . ." *Id.*

In this case, Taxpayer did take possession of the vehicle in Indiana, even if it was only for a few short blocks. Therefore, the sale was completed in Indiana and Dealership was obligated to collect sales tax at Taxpayer's home state rate, as discussed above.

Finally, Taxpayer argues that the collection of tax was inequitable and a violation of the Dormant Commerce Clause. While the Department appreciates Taxpayer's invitation to discussion the application of the Dormant Commerce Clause to this scenario, we find it a moot point as we have found in favor of the Taxpayer as discussed above.

FINDING

Taxpayer's protest is sustained.

June 18, 2018

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